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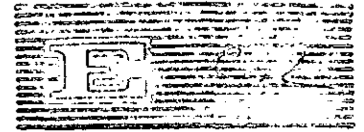

UNITED NATIONS

ECONOMIC
AND
SOCIAL COUNCIL

GENERAL
ST/CEPAL/Conf.67/L.2
July 1978
ENGLISH
ORIGINAL: SPANISH

C E P A L
Economic Commission for Latin America

Intergovernmental Preparatory Meeting
on a draft Latin American convention
on civil liability of carriers in
international land transport.

Santiago, Chile, 4 to 8 September 1978

LIMIT OF CIVIL LIABILITY OF CARRIERS IN INTERNATIONAL LAND TRANSPORT IN LATIN AMERICA: CRITERIA FOR ITS ESTABLISHMENT

78-7-1484-550

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/1. Introduction

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LIMIT OF CIVIL LIABILITY OF CARRIERS IN INTERNATIONAL LAND TRANSPORT IN LATIN AMERICA: CRITERIA FOR ITS ESTABLISHMENT

1. Introduction

Pursuant to a plan of work approved by the member countries of the Commission at its seventeenth session held in Guatemala City in May 1977, an Ad Hoc Group of Experts was convened by CEPAL to prepare a preliminary draft Latin American Convention on the Civil Liability of Carriers in International Land Transport.

During the course of one meeting held at CEPAL headquarters from 29 November to 2 December 1977, the Group of Experts requested the CEPAL secretariat to prepare a study on the effects of establishing relatively high or low limits of liability for carriers in international land transport. The pertinent portion of the report 1/ states that:

> "15. The Group of Experts did not attempt to reach a consensus on what the limit of liability in article 6 of the draft Convention should be, since this will be finally determined at the meeting of plenipotentiaries. Nonetheless, it considers that there are significant arguments both in favor of a high ceiling and of a low one. The Group therefore suggests that, in order to aid the negotiations of the plenipotentiaries, the CEPAL secretariat should prepare a study on this aspect, covering inter alia the following considerations:
>
> (a) The relation between this ceiling and the total cost of the premium paid by the shipper to the cargo-insurer, or the premium paid by the carrier to his civil liability insurer and passed on in the charges for freight or services rendered;

1/ CEPAL, Report of the Group of Experts on the meeting to draw up a draft Latin American convention on the civil liability of carriers in international land transport (E/CEPAL/1047).

/(b) The ceiling

(b) The ceiling established by the United Nations Conference on the Carriage of Goods by Sea (Hamburg, March 1978) and the advantages of having uniformity between the ceiling adopted in Latin America and that applicable to carriage by sea;

(c) The possibility that Latin American insurers will offer carriers civil liability insurance at different levels of maximum liability;

(d) The problem of risk concentration, especially in ports and cargo terminals in the interior;

(e) The way in which civil liability insurance for the different types of carriers is quoted and applied in various parts of the world; and

(f) The relation between the ceiling and the number of legal actions that might be brought."

2. Legal basis of carrier liability

The demand for and the supply of transport services are influenced by the extent of the legal obligations imposed upon carriers. One such legal obligation is the amount by which carriers must respond to consignees for failure to deliver goods free from loss, damage or delay. The amount of compensation payable by carriers for such damages is determined by the provisions of the applicable national law or transport convention.

(a) National laws

As no international land transport convention exists at present for Latin America; transport between any two or more countries of the region is governed by each country's commercial code while the goods are transported through that country, and the provisions of the contracts of carriage. Three commercial codes representative of Latin America -- those of Brazil, Chile and Mexico -- were therefore studied to determine the liability exposure of carriers for loss, damage and delay in delivery of goods in national transport.

/In all

In all three of the commercial codes studied, the domestic carriers have been assigned unlimited liability for loss or damage to goods in national transport. For example, the Commercial Code of Mexico provides in the Tenth Title, Article 590 (IX) that:

> "The carrier shall pay for losses or damages for which he is responsible in accordance with the price which in the judgement of experts the mercandise would have had on the day and in the place in which it was to be delivered, the experts being required to take into account the indications in the way bill."

These same commercial codes establish an unlimited liability for carriers to pay compensation for damages occasioned by delays in delivery. For example, the Commercial Code of Chile provides in Book II, Title V, Article 206, that:

> "Where a fine is stipulated in compensation for the delay, the consignee shall be empowered to collect it by the mere fact of the delay and without need of proving injury, and to deduct the amount from the agreed price.
> The payment of the fine does not exempt the carrier from the obligation of compensation for injuries which the person interested in the arrival of the merchandise may have suffered from the direct or immediate effects of the delay."

Thus, as land transport within the Latin American region is currently governed by the applicable commercial code, carriers are subject to an unlimited liability exposure for loss or damage to cargo, as well as for delay in delivery.

b) International law

(i) Liability ceilings for goods lost or damaged. The compensatory provisions in both the International Convention concerning the Carriage of Goods by Rail (CIM) 2/ and the Convention on the Contract for the International Carriage of Goods by Road (CMR) 3/

2/ International Convention concerning the Carriage of Goods by Rail (Convention internationale concernant le transport des marchandises par chemins de fer: CIM), done at Berne on 7 February 1970, applicable since 1 January 1975

3/ Convention on the Contract for the International Carriage of Goods by Road (Convention relative au contrat de transport international de marchandises par route: CMR), done at Geneva on 19 May 1956, applicable since 2 July 1961.

/ base a

base a shipper's recovery on the value of the goods lost or damaged with a liability ceiling of a stated amount per kilogram. For example, CMR in article 23 provides that:

> "When under the provision of this Convention, a carrier is liable for compensation in respect of total or partial loss of goods, such compensation shall be calculated by reference to the value of the goods at the place and time at which the were accepted for carriage.
> Compensation shall not, however, exceed 25 francs per kilogram of gross weight short. "Franc" means the gold franc weighing 10/31 of a gramme and being millesimal fineness 900."

The compensatory provisions in both the International Convention for the Unification of Certain Rules relating to Bills of Lading 4/ and the Convention for the Unification of Certain Rules relating to International Carriage by Air 5/, better known as the Hague Rules and Warsaw Convention respectively, provide only for a maximum liability per package, unit or kilogram. For example, the Hague Rules in article 4, paragraph 5, provide that:

> "Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding 100 pounds sterling per package or unit or the equivalent of that sum in other currency unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading."

Although the Hague Rules and Warsaw Convention provide only for a maximum liability per package, unit of kilogram, they implicitly limit an injured shipper's compensation to the value of the goods lost or damaged if that value is below such maximum. Thus, under CIM, CMR, the Hague Rules and the Warsaw Convention the responsible carrier would compensate an injured shipper with the value of the

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4/ Done in Brussels on 25 August 1924; applicable since 2 June 1931 (see United Nations, Register of Texts of Conventions and other instruments concerning international trade law, New York, 1973 (Sales number: E.73.V.3)).

5/ Done in Warsaw on 12 October 1929, amended in The Hague in 1955 (see ICAO, Annual Council Report-1977 document 9233); applicable since 1 August 1963.

/lost or

lost or damaged goods or the liability ceiling as indicated in the applicable transport convention, whichever value is lower.

(ii) Liability ceilings for delay in delivery. The compensatory provisions for delay in delivery of the goods transported by land, sea and air vary greatly. In European international land transport both CIM and CMR compute the shipper's compensation using the freight charges as a basis. For example CMR in article 23 provides that:

> "In the case of delay, if the claimant proves that damage has resulted therefrom the carrier shall pay compensation for such damage not exceeding the carriage charges.

While CIM also uses freight charges to compute a shipper's compensation for delay in delivery, it separates such compensation into a nominal payment of 1/10 of the freight charges where the shipper has not been injured, and double freight charges where the shipper has received an actual injury.

Although the Hague Rules do not lay down obligations for the ocean carrier in the case of delayed delivery, the Convention on the Carriage of Goods by Sea (Hamburg Rules) 6/ -- which is to ultimately replace the Hague Rules -- establishes such responsibility at two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage. Thus, in European international land transport and in the new ocean transport convention, a carrier's obligation for delay in delivery does not directly seek to compensate the injured shipper but rather to eliminate the income from a carriage that results in delayed delivery.

The Guatemala Protocol (1971) to the Warsaw Convention places a different monetary liability upon carriers for delay in delivering passengers, their baggage, and general cargo. For example, the monetary

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6/ Done in Hamburg in March 1978 (see United Nations, General Assembly, Final Act of the United Nations Conference on the carriage of goods by sea, 1978 (A/CONF.89/13).

/liability for

liability for delayed delivery of cargo is 250 francs per kilogram 7/.

3. Insurance in transport

Since international market transactions involving the movement of goods are seldom free from risk, these operations are heavily dependent on adequate insurance coverage from potential loss. Therefore, owners, carriers, financial institutions and any other person who will benefit from the timely and injury-free arrival of the goods or suffer financial injury through their being lost, damaged or delayed in delivery, have insurable interests. Although it is evident that both carriers and owners will try to transfer these risks through insurance, it should not be overlooked that both the insured amount and the policy costs are directly related to the level of civil liabilit imposed upon carriers. Furthermore, before discussing the relationship between the insurance covering the carrier's professional liability, cargo insurance purchased by shippers and the carrier's level of civil liability, a careful distinction must be made between the insurable interests of the carrier and the shipper, which originate from totally different sources of risks and therefore require equally different types of insurance coverage.

(a) Insurable interests

An owner's insurable interest in goods arises directly from his property interest in such goods which creates a need for cargo insurance In case of loss, the cargo insurer will merely satisfy himself that the loss occurred and that it was proximately caused by an insured risk. As the compensations for such an injury was previously negotiated between the cargo owner and his insurer, payment of the claim will usually be made without undue delay. Thus, cargo insurance requires only that there was a loss as provided by the insurance contract; there are no questions involving negligence of the carrier.

7/ For purposes of this Protocol, consists of 65 1/2 milligrams of gold being millesimal fineness 900.

/A carrier's

A carrier's insurable interest, on the other hand, arises from provisions within the contract of carriage, national laws and applicable international conventions establishing standards of care for the goods transported. These standards of care establish clearly defined risks for carriers, and hence many carriers choose to insure their civil liability. Any failure on the carrier's part to observe these standards of care for the transport of goods will establish, if the goods are proximately insured thereby, an obligation to compensate the owner of such goods or the person representing him.

Obviously, establishing the existence of negligence on the carrier's part involves both questions of fact and law, and litigation is not infrequent. Thus, it would take the cargo owner much longer to obtain settlement under professional liability insurance than under cargo insurance and he would not necessarily be fully compensated for his loss.

(b) Double insurance

As the insurable interests of both the carrier and cargo owner originate from totally different sources of risks, it is incorrect to assert that the existence of professional liability insurance and cargo insurance represent a costly duplication of transport insurance. Without cargo insurance -- which normally includes extensive "all-risks" coverage -- cargo owners would be exposed to the danger of loss or damage to their goods due to causes beyond the carrier's responsibility as established by national laws and international conventions and would find credit for their business transactions difficult to obtain. Similarly, without professional liability insurance, carriers would have to bear risks far exceeding their financial capacities. Therefore, a certain degree of coexistence of cargo insurance and carrier's professional liability insurance seems necessary.

/This coexistence

This coexistence would constitute double insurance if cargo owners were permitted a double recovery -- from the carrier's professional liability insurer and his own cargo insurer -- for an injury to the goods; or if the premium rating for cargo insurance did not take into account the total past experience -- including subrogation recoveries from professional liability insurers -- of cargo owners.

An insured cargo owner will normally file a claim with his cargo insurer upon the occurrence of a loss-producing event. If the loss was produced by an insured risk, the cargo insurer will pay the previously-agreed compensation and take an assignment of all the cargo owner's rights and remedies against the responsible carrier, thereby preventing the cargo owner from obtaining more than full indemnity. The cargo insurer will then seek via subrogation to recover said compensation from the responsible carrier's professional liability insurer.

Subrogation recoveries received by the cargo insurer are a factor in rating cargo insurance. Such ratings are based on past experience, and part of that past experience is related to subrogation recoveries from carriers or their professional liability insurers. Cargo insurance ratings then, are usually based on the experienced net cost of coverage after deducting such recoveries. As the doctrine of subrogation prevents cargo owners from obtaining more than full indemnity and allows greater accuracy in calculating experience rating for cargo insurance, any overlap in risk bearing between professional liability insurance and cargo insurance is precluded.

(c) Relative costs of transport insurance

Cargo insurers, when extending coverage to the owners of goods know in advance the property to be transported and the risks involved in a specific means of transport. This situation allows cargo insurers to accurately rate the sum insured against the property at risk. Thus,

/cargo insurers

cargo insurers may tailor coverage to suit the specific requirements of a cargo owner.

On the other hand as professional liability insurers do not know in advance the specific property to be transported nor all the risks involved in such transport, no sum insured can be properly rated against the property at risk.

This uncertainty as to the nature of possible liability claims and of the amounts involved for professional liability insurance leads to a higher premium cost than that paid for cargo insurance when it covers a given risk at an equal degree of compensation. For example, in Europe the premium for carrier's professional liability insurance is a percentage of the carriage charges and unrelated to either the value of the goods or the risks involved in such transport. The uncertainty as to the risks involved in a carrier's professional activities is even greater when there is no fixed ceiling on his civil liability.

4. <u>Criteria for establishing a civil liability ceiling for carriers in international land transport in Latin America</u>

(a) <u>Objectives pursued in determining a liability ceiling</u>

The Latin American Convention on civil liability of carriers in international land transport is intended to form part of those multilateral and bilateral agreements in transport, customs, banking and other regulations that provide the basis for carrying out inter-Latin American trade, i.e., which form the institutional infrastructure of trade and international transport. This institutional infrastructure has the same degree of importance as the physical infrastructure, that is, the ports, highways and railways used for the transport of each country's exports and imports. Both types of infrastructure should be improved in Latin America. However, the need for a modern institutional infrastructure is much more striking as the existing

/institutional infrastructure

institutional infrastructure results from a reduced historical importance of trade among the Latin American countries.

Since a convention establishing standards of care that should be observed by the carrier in the exercise of his professional activities is only one element of this institutional infrastructure, it is necessary to keep in mind the major objectives pursued in order to ensure that the effects of the convention and such objectives will be compatible. The Latin American countries have indicated among others, the following objectives:

(i) To promote the growth of international inter-Latin American trade;

(ii) To minimize the total cost which shippers have to pay for all necessary services;

(iii) To create conditions that will lead to the existence of a suitable structure for the regional land transport industry;

(iv) To assure an adequate distribution of cargoes among the different modes of land transport and a more advantageous use of their complementary possibilities;

(v) To provide sufficient incentive which ensures that all persons in the international transport chain have an interest in taking necessary precautions to see that goods reach their destination in a timely and injury-free condition.

(vi) To promote the increased participation of Latin American insurers in the regional insurance market;

(vii) To see that the rules governing international land transport are clear and simple to apply.

(b) <u>Relationship between the carrier's liability ceiling and other variables</u>

The possible effect on these objectives of the amount and unit of account limiting the civil liability of the carrier cannot be analysed unless a number of other variables with which they are closely related

/are simultaneously

are simultaneously taken into account. The effect of a relatively high or low ceiling on such objectives is generally indirect, i.e., through other variables such as the cost of the cargo insurance premium. However, there are certain variables such as the standards of care which the carrier is expected to observe and the level of liability ceiling that are directly related.

In fact, the liability ceiling in a large measure will determine the standards of care.

Such standards of care directly influence the cost of protecting the cargo from loss or damage; therefore, the stricter the standards, the greater the care which carriers must take in handling cargo, and consequently the higher the costs of handling and supervision if they wish to obtain professional liability insurance coverage at reasonable prices. It is a fact that the cost of professional liability insurance will be heavier for those carriers with a greater loss experience rating and this will act as an incentive for carriers to handle with care the goods entrusted to them for carriage at the risk of being outsted from market competition as the result of high freight rates. It must be recognized, however, that carriers assign a high degree importance to the careful handling of cargo for which they are responsible and that this stems from their desire to provide a good-quality service in order to attract more business from shippers.

Protection of cargo from loss or damage represents a cost to carriers in terms of an investment in the means for cargo handling and supervision. Such investment is directly related to the standards of care required of and to the maximum civil liability ceiling established for carriers. Carriers should be willing if they have sufficient information concerning their operations and are acting prudently, to invest in supervision and handling facilities up to the point where such investments represent an adequate return compared with the alternative costs of compensating for cargo loss or damage. If the liability

ceiling established for carriers is too low, their interest in protecting the cargo will obviously diminish.

On the other hand, if the ceiling is too high, carriers will have a strong incentive to invest in facilities which will ensure care in handling of cargo. However, only up to the point where the marginal cost of such investment equals the marginal payment for loss or damage to the cargo. If the carrier does not insure his professional liability, he will then compare the cost of investment in such handling equipment to the potential compensations he would have to pay directly to shippers for any loss or damage to the cargo. On the other hand, if professional liability insurance has been purchased, as will normally be the case, a carrier's decision on how much to invest in cargo handling equipment and other loss prevention measures will depend on the relative improving of his loss experience rating due to that investment.

The foregoing observations indicate that a liability ceiling for the carrier should be set at least a value that will encourage carriers to invest in handling facilities and supervision for the care of the cargo. Such investments should be up to an amount that will permit carriers to reach a minimal level of loss or damage and a minimal cost of professional liability insurance and cargo insurance.

Another of the variables of great influence in considering the establishment of a maximum civil liability ceiling for carriers is the manner of calculation and payment of professional liability insurance premiums and the way in which the cost of such premiums is transferred to shippers. Unfortunately, Latin America lacks experience regarding professional liability insurance policies for carriers.

In Europe, where there exists experience with professional liability insurance for carriers the premium is calculated as a

/percentage of

percentage of the freight charge for transport. In this case, the effect of a high ceiling is to increase the cost of insurance for all goods without discrimination as to value, which is detrimental to cargoes with a value below that of the ceiling.

One of the objectives pursued in the preparation of the institutional infrastructure in Latin America is to facilitate a greater participation of Latin American insurance companies in the regional insurance market. The capacity of the regional insurance industry to cover the civil liability risks of carriers in international land transport is small at present because of the lack of a ceiling on that liability, and obviously the lower the ceiling established, the greater will be the possibilities of Latin American insurers covering this type of risk without having to resort to reinsurnace with companies outside the region. Nevertheless, if the ceiling were excessively low, carriers would have no incentive to obtain liability insurance.

In section 3 on transport insurance it was noted that as a result of existing international trade practices, shippers will continue to base their actions to obtain compensation for loss or damage on cargo insurance. Although the amount of cargo insurance is uninfluenced either by extensive or limited professional liability insurance coverage or by a high or low maximum liability ceiling, such is not the case with professional liability insurance. The amount and cost of carriers' professional liability insurance coverage is influenced directly by the amount of the liability ceiling. The greater the carrier's maximum liability ceiling the greater the insurance coverage needed and, hence the cost to shippers. In order to minimize transport insurance costs it is necessary to select a maximum liability ceiling that will reduce the carrier's need for professional liability insurance while at the same time providing carriers financial incentives to institute loss prevention measures for the goods transported.

/From an

From an examination of the relationship between the liability ceiling and a number of other variables, such as care of the cargo, the capacity of insurance companies to cover carriers' civil liability risks, the total cost of insurance in the transport operation, etc., it will be seen that there would be serious disadvantages if too high or too low a ceiling were established. Nevertheless, this examination has not provided criteria for determining what level would be too high or too low. It is therefore necessary to consider other aspects which can provide quantitative criteria that will assist in establishing an appropriate civil liability ceiling for Latin America. Two of such criteria are the level of liability ceiling established by the Hamburg Rules and the composition of inter-Latin American trade.

The United Nations Convention on the Carriage of Goods by Sea, 1978, was signed at Hamburg 8/ (Hamburg Rules) on 30 March 1978. This Convention, adopted as a result of intensive work by UNCITRAL and UNCTAD will come into force one year after it has been ratified by 20 countries, and from that moment it will replace the Hague Rules which now govern international maritime transport.

As regards the civil liability ceiling of ocean carriers, the Hamburg Rules establish the amount of 2.5 SDRs 9/ per kilogram of gross

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8/ The fourteen signatory countries included six Latin American States: Brazil, Chile, Ecuador, Mexico, Panama and Venezuela.

9/ The special drawing right (SDR) is a unit of value established by the International Monetary Fund (IMF) which may be used as a relatively stable unit of account for international operations. Its value in United States dollars is determined daily by adding the values in dollars, at the market exchange rate, of certain proportions of the currencies of the 16 countries with the most important role in international trade. At 31 May 1978 its value was 1.21985 dollars. The value of the SDR is any currency other than the United States dollar is obtained by means of the exchange rate of that currency to the United States dollar and the value of the SDR in dollars.

/weight. According

weight. According to parity of the SDR at the end of May 1978, the ceiling was equivalent to 3.05 dollars per kilogram, or 3,050 dollars per metric ton.

The adoption of SDRs in the new Hamburg Rules follows the world trend towards using this unit in international conventions, both in new conventions and in amendments to existing ones. Due to the demonetization of gold and the floating of the United States dollar vis-a-vis other currencies, experience has shown that values expressed in these units have lost the relationship they had with the currencies of many of the signatory countries of the conventions at the time they were ratified.

The draft Latin American Convention which will be considered at the Intergovernmental Preparatory Meeting on civil liability carriers in international land transport is applicable to "the activity whereby goods are carried by land, handled or stored, for reward, when such operations form part of the movement of goods from the territory of one State to that of another" (article 1, paragraph 1), and where such movement is "between signatory States" (article 2, paragraph 1). Thus, the Convention is applicable to operations carried out in a signatory country when such operations precede or follow maritime transport between signatory countries. Likewise, the Convention is applicable when, either before or after maritime transport to or from a non-signatory country, international land transport is effected through two signatory countries, as might happen in the case of a mediterranean country. In view of these relationships between the Hamburg Rules and the draft Latin American Convention, it seems advisable to determine whether there would be any significant benefits from establishing the same ceiling as recently adopted in the Hamburg Rules.

The draft Latin American Convention differs from others of its kind in Europe by including within its scope of application both road and rail carriers, since in Europe separate conventions exist, and by covering other operations such as storage and handling which have not yet been the subject of conventions in Europe, although there are some under study. The purpose of grouping all of these operations under a

/single legal

single legal regime is, on the one hand, to minimize any differences or gaps where the standards are not clear during the course of an international movement of goods and, on the other, to facilitate access by shippers whose goods have suffered damage or loss to a court of indisputable jurisdictional competence. Underlying this aim is the conviction that standard and clearly defined rules would favour growth of international trade.

Furthermore, through the discussions in UNCTAD, by the Intergovernmental Preparatory Group for a Convention on international multimodal transport, it has been seen that one of the greatest difficulties in establishing the system of civil liability for multimodal transport operators is the existing difference between the various modes of transport with respect to the civil liability ceilings for carriers. This situation is so serious that it is generally recognized that no system of liability for multimodal transport operators will be completely satisfactory, nor could it be while the standards of care as well as civil liability ceilings vary so widely according to whether the goods are carried by air, sea, rail or road. From this point of view, it is fortunate that Latin America, never having adopted a convention on civil liability for land transport in the past, has every opportunity of avoiding many of the difficulties encountered in Europe as a result of the growing use of the multimodal transport contract.

For the reasons explained above, it is realized that there would be significant benefits if the civil liability ceiling adopted in the Latin American Convention were the same as that established in the Hamburg Rules, particularly as the standards of care laid down in the draft convention are very similar to those of the Hamburg Rules.

While uniform rules affecting international trade are in themselves advantageous, the establishment of a liability ceiling should also take into account other important factors. In addition to the aspects already discussed in this section, the relationship between this ceiling and the composition of inter-Latin American trade is particularly important. To establish an extremely low liability ceiling

/relative to

relative to the value of Latin American trade would mean the application of this ceiling to the majority of the claims for loss and damage, avoiding in these cases the payment of compensation equal to the value of the goods and, as has been seen, reducing the carrier's incentive to exercise due care. However, on the other hand, if an excessively high ceiling is fixed relative to the value of the trade involved, this would needlessly increase the cost of professional liability insurance for carriers and, hence, the tariffs charged all shippers.

Although no complete information has been made available on the composition of inter-Latin American trade for ranges of value per ton carried by land, the following data on Argentine and Brazilian imports by road in 1974 are fairly illuminating.

DISTRIBUTION OF AEGENTINE AND BRAZILIAN IMPORTS CARRIED BY ROAD, ACCORDING TO THEIR VALUE, 1974

Value per ton in dollars up to:	Cumulative percentage of imports			
	Argentine		Brazil	
	According to weight	According to value	According to weight	According to value
200	70.6	27.1	39.0	6.4
400	83.3	37.3	76.2	35.9
600	86.2	41.1	85.6	47.1
800	88.3	44.9	89.4	53.6
1 000	90.2	49.6	94.3	64.4
1 500	94.2	62.5	96.2	70.1
2 000	98.3	81.0	97.8	77.2
2 350	98.5	82.5	98.5	81.0
2 500	98.9	85.1	98.9	83.3
3 000	99.3	88.2	99.1	84.5
3 500	99.4	88.7	99.3	86.8
4 000	99.5	89.4	99.5	87.8
4 500	99.5	90.1	99.5	88.5
5 000	99.6	90.9	99.6	89.5

Source: Prepared by CEPAL on the basis of information supplied by Argentine and Brazil to the Latin American Free Trade Association (LAFTA).

In 1974 the average value of 2.5 SDRs per kilogram expressed in dollars per ton was approximately 2,350 dollars. This amount covered 82.5% of the value of Argentina's imports and 81% of Brazil's imports carried by road in 1974, and 98.5% of the imports measured by weight, in both cases. The adoption of a liability ceiling of 2.5 SDRs per kilogram would have meant an effective limit for only 17.5% of Argentina's imports and 19% of Brazil's, according to their value, or for less than 2% of their physical volume in both cases. For the remainder of the goods the compensation ceiling for loss or damage would have been their actual value. Since in any case the ceiling covers part of the value of those goods that are above the ceiling, the amount of trade remaining without any coverage in Argentina's case is only 8.2% and in Brazil's case, 10.2%.

In order to cover 5% more of the imports according to their value, it would have been necessary to raise the ceiling of 2,350 dollars to nearly 3,000 dollars per ton in the case of Argentina and to about 3,500 dollars per ton for Brazil. A ceiling of 3,500 dollars per ton in 1974, taking into account the unit increases in world trade prices, would be equivalent to approximately 4,675 dollars per ton in May 1978. This rise in the ceiling would of course mean higher freight rates for all imports, since, as has already been noted, the cost of professional liability insurance is distributed to all cargo carried in proportion to the freight rates.

From the foregoing considerations it may be inferred that the liability ceiling established in the Hamburg Rules maintains a reasonable relationship with the composition of imports of these two Latin American countries which is predominantly carried by road. In view of the decided advantages that would result from establishing the same ceiling in the Latin American Convention as that in the Hamburg Rules, it would seem advisable to give serious consideration to the adoption of said ceiling.